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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2011-577*

11 **YEN DELUTE MUSNGI**

12 **10521 SW 158th Court**
13 **Apt. 304 – Bldg. 20**
14 **Miami, Florida, 33196-4215**

15 **Registered Nurse License No. 740226**

16 Respondent.

A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about November 20, 2008, the Board of Registered Nursing issued Registered
23 Nurse License Number 740226 to Yen Delute Musngi ("Respondent"). The Registered Nurse
24 License expired on May 31, 2010 and has not been renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws:
28

1 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
2 part, that the Board may discipline any licensee, including a licensee holding a temporary or
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 118 subdivision (b) of the Code grants the Board jurisdiction over suspended,
6 expired, forfeited, cancelled, or surrendered licenses:

7 "The suspension, expiration, or forfeiture by operation of law of a license issued by a
8 board in the department, or its suspension, forfeiture, or cancellation by order of the
9 board, shall not, during any period in which it may be renewed, restored, reissued, or
10 reinstated, deprive the board of its authority to institute or continue a disciplinary
11 proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground."

12 6. Section 2764 of the Code also provides, in pertinent part, that the expiration of a
13 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
14 against the licensee or to render a decision imposing discipline on the license. Under Section
15 2811 subdivision (b) of the Code, the Board may renew an expired license at any time within
16 eight years after the expiration.

17 7. Section 2761 of the Code, which is part of Article 3 of the Nursing Practice Act,
18 provides, in pertinent part:

19 "The board may take disciplinary action against a certified or licensed
20 nurse or deny an application for a certificate or license for any of the following:

21 "(a) Unprofessional conduct, which includes, but is not limited to, the
22 following:

23 ...

24 "(4) Denial of licensure, revocation, suspension, restriction, or any other
25 disciplinary action against a health care professional license or certificate by another
state or territory of the United States, by any other government agency, or by another
California health care professional licensing board. A certified copy of the decision
or judgment shall be conclusive evidence of that action...."

26 8. Section 2762 of the Code provides disciplinary grounds relating to controlled
27 substances:

28 "In addition to other acts constituting unprofessional conduct within the

1 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
2 person licensed under this chapter to do any of the following:

3 (a) Obtain or possess in violation of law, or prescribe, or except as
4 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
5 himself or herself, or furnish or administer to another, any controlled substance as
6 defined in Division 10 (commencing with Section 11000) of the Health and Safety
7 Code or any dangerous drug or dangerous device as defined in Section 4022.

8 ...

9 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
10 unintelligible entries in any hospital, patient, or other record pertaining to the
11 substances described in subdivision (a) of this section.”

12 COST RECOVERY

13 9. Section 125.3 of the Code provides, in pertinent part, that the Board, Registrar, or
14 Director may request the administrative law judge to direct a licensee found to have committed a
15 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
16 investigation and enforcement of the case.

17 FIRST CAUSE FOR DISCIPLINE

18 **(Disciplinary Action by the Florida State Board of Nursing)**

19 10. Respondent is subject to disciplinary action under Section 2761 subdivision (a)(4)
20 because the Florida State Board of Nursing (“Florida Board”) took disciplinary action against her
21 in 2009. The circumstances of the Florida Board’s disciplinary action are as follows:

22 11. On or about January 9, 2009, the Florida Board executed a settlement agreement with
23 Respondent in the disciplinary matter entitled, *Department of Health v. Yen Delute Musngi, R.N.*
24 The Florida Board formally adopted this settlement agreement in a Final Order on October 20,
25 2009.

26 12. In the settlement agreement, the Florida Board incorporated by reference an
27 Administrative Complaint filed against Respondent on December 15, 2008.

28 13. The Administrative Complaint alleged that that on or about June 10, 2008, while
working as a registered nurse at Kendall Regional Medical Center in Miami, Florida, Respondent,
without authorization from a physician, had overridden the dispensing machine’s controls to
obtain one vial of Diazepam, also known as Valium, ostensibly for a patient. Respondent then
cancelled the override, but failed to account for the vial of Diazepam. She claimed to have

1 administered it to a patient, but had no physician's order to do so, and failed to document this
2 administration of the Diazepam on the patient's medical record.

3 14. In the Administrative Complaint, the Florida Board alleged that Respondent had
4 violated Florida's nursing statutes and regulations and engaged in unprofessional conduct by
5 overriding the dispensing machine to obtain Diazepam, administering Diazepam to a patient
6 without a physician's order, and by failing to document the administration of Diazepam on a
7 patient's medical record.

8 15. In the settlement agreement, Respondent admitted that the facts alleged in the
9 Administrative Complaint, if true, constituted violations of law, and agreed to the imposition of
10 discipline against her. The discipline imposed was a public reprimand, an administrative fine of
11 \$250, requiring Respondent to repay the Florida Board's investigative costs, and requiring
12 Respondent to complete a course on Florida Nursing laws.

13 16. Under Section 2761 subdivision (a)(4) of the Code, the disciplinary action taken by
14 the Florida Board for Respondent's falsification of hospital records in order to obtain Diazepam,
15 administration of Diazepam without a physician's order, and failure to document the
16 administration of Diazepam on a patient's chart are grounds for the Board to take disciplinary
17 action.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 17. By committing the acts set forth in particularity in paragraphs 10 through 16, above,
21 Respondent is subject to disciplinary action on the grounds of unprofessional conduct pursuant to
22 Section 2761 subdivision (a) of the Code for falsifying hospital records to obtain Diazepam, for
23 administering Diazepam without a physician's order, and for failing to document the
24 administration of Diazepam on a patient's chart.

25 ///

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28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Drug-Related Transgressions)**

3 18. By committing the acts set forth in particularity in paragraphs 10 through 16, above,
4 Respondent is subject to disciplinary action under Section 2762(e) of the Code for falsifying
5 hospital records to obtain Diazepam, a controlled substance.

6 **PRAYER**

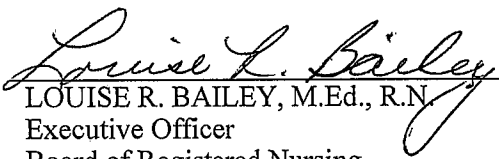
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License Number 740226, issued to Yen
10 Delute Musngi;

11 2. Ordering Yen Delute Musngi to pay the Board of Registered Nursing the reasonable
12 costs of the investigation and enforcement of this case, pursuant to Business and Professions
13 Code Section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: December 27, 2010


LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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